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Supreme Court, U.S.
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No. 06-346

# In The Supreme Court of the United States

UNIVERSAL COMPUTER SYSTEMS, INC., et al.,

*Petitioners,*

v.

DEALER SOLUTIONS, L.L.C., et al.,

*Respondents.*

**On Petition For A Writ Of Certiorari To The Court Of Appeals For The First District Of Texas**

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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September 29, 2006

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## QUESTIONS PRESENTED FOR REVIEW

1. When the parties have agreed to arbitrate the "entire controversy," does the trial court have the authority to issue discovery orders and sanctions rulings that affect the merits of the arbitration?

2. When the trial court enters improper orders limiting the evidence at arbitration, is "harmless error" the proper standard of review?

3. Is it "harmless error" for a trial court to compel arbitration subject to rulings on the merits of arbitrable issues?

## LIST OF PARTIES AND RULE 29.6 LIST

Petitioners:

Universal Computer Systems, Inc.
Universal Computer Consulting Ltd.
Universal Services, Inc.
Dealer Computer Services, Inc.

Upon information and belief, no publicly held company owns 10% or more of the stock of Universal Computer Systems, Inc., Universal Computer Consulting, Ltd., Universal Computer Services, Inc., or Dealer Computer Services, Inc.

Respondents:

Dealer Solutions, L.L.C.
Dealer Solutions Holdings, Inc.
ADP, Inc.

ADP, Inc. owns all of the stock of Dealer Solutions Holdings, Inc. No publicly held company owns 10% or more of the stock of ADP, Inc.

Business Solutions, Inc.

SMC Investment, Inc. f/k/a SWT Investments, Inc.
Southwest Toyota, Inc. d/b/a Sterling McCall Toyota
SMC Luxury Cars, Inc. d/b/a Sterling McCall Lexus

Upon information and belief, Group 1 Automotive Inc. owns 10% or more of the stock of SMC Investment Inc., and/or Southwest Toyota, Inc., and/or SMC Luxury Cars, Inc.

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## INTRODUCTION

This petition should be denied because there is no basis for jurisdiction. Respondents prevailed in an arbitration under the Texas General Arbitration Act. The arbitration award was confirmed by the trial court in a judgment that was affirmed by the Texas Court of Appeals in a unanimous, well-reasoned opinion that expressly recognized that the Texas General Arbitration Act governs. The Texas Supreme Court denied both review and rehearing. Because there is no federal question, no basis for jurisdiction under 28 U.S.C. § 1257 exists.

Moreover, Petitioners seek review on three questions relating to evidentiary issues of no conceivable interest to this Court or, indeed, to anyone except the parties to this case. As the Court of Appeals held, these issues constitute no more than harmless error because the arbitration panel did not restrict Petitioners from presenting evidence and considered all the evidence they did present. These questions therefore do not raise any conflict in decisions or any important federal question.

## THERE IS NO BASIS FOR JURISDICTION

Respondents object to Petitioners' stated basis for jurisdiction. Petitioners make a clear misrepresentation when they assert that this Court has jurisdiction under 28 U.S.C. § 1257 and list as statutes involved in this case two sections of the Federal Arbitration Act (9 U.S.C. §§ 3-4).

The opinion of the Texas Court of Appeals states: "We agree that the Texas General Arbitration Act governs this dispute. Although the arbitration provision contained in

the license agreement between UCS and Sterling McCall does not reference the Texas General Arbitration Act, the parties' subsequent Agreed Order to Stay Action and Compel Arbitration specifically incorporates it. . . . We therefore conduct our review under the Texas General Arbitration Act." [App. 17-18] Nowhere in the opinion is the Federal Arbitration Act even mentioned. Nor did Petitioners contend below that the Federal Arbitration Act rather than the Texas General Arbitration Act governs this dispute. This case involves Texas law solely, and therefore no jurisdiction exists under 28 U.S.C. § 1257.

## REASONS FOR DENYING THE PETITION

Because there is no legitimate basis for jurisdiction, the petition should be denied.

Even if there were jurisdiction, this case presents no conflict in decisions or important federal question. All three questions presented for review involve a Texas trial court's powers to rule on evidentiary issues that relate to a voluntary arbitration. As to that, the Texas Court of Appeals held:

> We hold that the facts presented here are not exceptional under the applicable caselaw. We further hold that the trial court should not have issued a discovery order limiting the presentation of certain evidence before the arbitration, but the arbitrators allowed the evidence and considered it in any event, thus ameliorating any harm. We therefore affirm the trial court's confirmation of the arbitrators' decision.

[App. 3]

There is no federal question at all in this case, much less an important one meriting review. Petitioners do not suggest there is a conflict in decisions, and there is none. There is nothing to review.

## CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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